THE HON'BLE THE ACTING CHIEF JUSTICE SRI PINAKI CHANDRA GHOSE

WRIT PETITION NO.7765 OF 2003

DATED:20.9.2012

Between:
Mashetti Sujatha … Petitioner

And

M/s. Canara Bank
Rep. by its Chief General Manager
Head Office at 112, JC Road
Bangalore
Karnataka
and others … Respondents

THE HON'BLE THE ACTING CHIEF JUSTICE SRI PINAKI CHANDRA GHOSE

WRIT PETITION NO.7765 OF 2003

ORDER:

This writ petition is filed *inter alia* challenging the auction notice dt.7.12.2002 issued by the respondent – bank and consequently to set aside the auction held on 19.12.2002.

According to the writ petitioner, she took agricultural loan from the respondent – bank on 18.10.2000 for an amount of Rs.4,500/- against a gold ornament. Due to drought conditions, she could not clear the loan. A notice dt.19.12.2002, which was statedly posted on 9.1.2003, was received by her on 10.1.2003, wherein it was informed that the gold ornament pledged to the bank was auctioned on 19.12.2002. When she approached the bank complaining about the action taken by the respondent, she was informed that the auction notice was published in a daily newspaper of the district edition on 7.12.2002 and the auction was concluded in favour of one Naga Prasad of Krishnat District, for a total sale proceeds of Rs.6,800/-. According to the petitioner, the amount realized by auctioning the gold ornament was much lower. Though she requested the bank to cancel the auction and accept the payment of Rs.4,500/- as one time settlement, the same was not acceded to by the bank. It is her case that no notice was ever served on her and hence the action of the bank is violative of principles of natural justice and the auction conducted on 19.12.2002 should not be given effect to.

On the contrary it is submitted on behalf of the respondent – bank that the bank tried to trace out the petitioner but came to learn that

the petitioner left the village after her marriage and she purportedly gave a wrong address to mislead the bank. Out of 8 loan accounts 5 accounts were cleared and 3 were pending and same were put to auction upon issuing the notification and there is no violation of principles of natural justice since notice was deemed to have been served in terms of the agreement. It is further stated that while the auction was conducted on 19.12.2002, the writ petition was filed on 18.3.2003 much after the date of auction and as the auction was given effect to, no order can be passed in favour of the petitioner in this writ petition.

Having heard the learned counsel for the parties and perusing the material available on record, it appears to me that this writ petition has become infructuous as the auction in the matter has already been taken place and no interim order is subsisting, which could have saved the petitioner to get an order for cancellation of the auction, was subsisting as on today. Since the auction has already been held and third party rights have already accrued in the matter in question, it is not possible for this Court at this stage to set aside the said auction.

Hence, the writ petition is devoid of merit and is accordingly dismissed. The respondent – bank is, however, directed to refund the amount, which is lying in the bank in excess of the amount they have realized with regard to the loan account of the petitioner, within a period of one week. No costs.

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PINAKI CHANDRA GHOSE, ACJ

20.9.2012

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